

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOSEPH JOHN ETCHEVERRY,)	1:05-CV-00454-OWW-DLB-HC
)	Appeal Number 06-17398
Petitioner,)	
)	ORDER REQUIRING PETITIONER TO
v.)	SUBMIT COMPLETED APPLICATION TO
)	PROCEED IN FORMA PAUPERIS ON
)	APPEAL OR PAY FILING FEE
JEANNE WOODFORD,)	
)	ORDER DIRECTING CLERK TO SERVE
Respondent.)	COPY OF THIS ORDER ON COURT OF
)	APPEALS

_____ Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On August 29, 2006, Magistrate Judge Dennis L. Beck issued Findings and Recommendations that the petition for writ of habeas corpus be denied. On October 13, 2006, District Judge Oliver W. Wanger adopted the Report and Recommendation and denied the petition. Judgment was entered on October 13, 2006.

On November 15, 2006, Petitioner filed a notice of appeal. On December 15, 2006, the court issued an order deeming petitioner's request for certificate of appealability as unnecessary. On December 22, 2006, the certificate of record was transmitted to the Court of Appeals for the Ninth Circuit.

On December 7, 2006, Petitioner filed an application to proceed in forma pauperis on appeal.

1 A party who was permitted to proceed in forma pauperis in the district court may proceed in forma
2 pauperis on appeal without further authorization unless the district court certifies that the appeal is not
3 taken in good faith. See Fed. R. App. P. 24(a)(3). In this case, Petitioner paid the filing fee and did not
4 proceed in this Court in forma pauperis. Thus, Petitioner is not automatically entitled to proceed in
5 forma pauperis on appeal.

6 Rule 24(a)(1) of the Federal Rules of Appellate Procedure states that a party who desires to
7 appeal in forma pauperis must file a motion in the district court and attach to that motion a completed
8 application to proceed in forma pauperis, along with the issues the party intends to present on appeal.
9 Petitioner's request, however, was not accompanied by a completed application to proceed in forma
10 pauperis. See 28 U.S.C. 1914(a); 1915 (a).

11 Petitioner did not submit the application to proceed in forma pauperis on the proper form. The
12 Court will provide Petitioner with the opportunity to submit either the appropriate application and
13 certified copy of Petitioner's prison trust account or the \$455.00 filing fee.

14 Accordingly, the Court ORDERS that:

15 1. The Clerk of the Court is DIRECTED to send Petitioner a copy of the application to
16 proceed in forma pauperis;

17 2. Petitioner is DIRECTED to submit either the completed application, accompanied by a
18 certified copy of Petitioner's prison trust account statement for the last six months, **or** the \$455.00 filing
19 fee, within thirty (30) days of the date of service of this order; and

20 3. The Clerk of Court is DIRECTED to serve a copy of this order on the Court of Appeals
21 for the Ninth Circuit.

22
23
24 IT IS SO ORDERED.

25 **Dated: January 10, 2007**

26 ah014d

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE